

Message Text

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72

ACTION AID-59

INFO OCT-01 EA-07 ISO-00 NEA-05 IO-09 L-03 H-01 SS-20

SPC-03 EB-05 SIL-01 /114 W
----- 084958

P R 250903Z MAR 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2153

INFO AMEMBASSY BANGKOK

AMEMBASSY VIENTIANE

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USADB

AIDAC

PASS STEPHEN TISAEP/SA BUREAU BANGKOK FOR RED

E.O. 11652: ADS, DECLAS 3/31/75

TAGS, EFIN, LA

ONAM NGUM II

NOORZOY/WILLIAMS 25 MARCH INFORMALLY PROVIDED
USADB SUGGESTED DRAFT LANGUAGE AND COMMENTS FOR
PROPOSED PROCUREMENT ARRANGEMENTS BETWEEN BANK
AND U.S. GOVT IN FORM OF SIDE LETTER AS INSTRUCTION
FROM BANK TO EDL. COMMENTS REQUESTED ASAP. TEXT
FOLLOWS HERewith:

QUOTE: AA BANK PROPOSES THAT USAID PROCUREMENT REQUIRE-
MENTS BE SET OUT IN INSTRUCTIONS BY ADMINISTRATOR TO
EDL. OBJECT IS TO HAVE INSTRUCTIONS TO GREATEST EXTENT
SELF-CONTAINED SO CAN SIMPLY BE REPEATED IN BID DOCUMENTS.
FOLLOWING AS FIRST DRAFT OF SUCH INSTRUCTIONS FOR
YOUR COMMENTS:

"1. WE REFER TO THE SECOND MAN NGUM DEVELOPMENT
FUND AGREEMENT, 1974 (THE FUND AGREEMENT) AND THE PROJECT
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AGREEMENT DATED 1974 BETWEEN THE KINGS OF

LAOS (LAOS), ELECTRICITE DU LAOS (EDL) AND THE BANK. WE REFER IN PARTICULAR TO SECTION 2.05(B) AND SCHEDULE 3 OF THE PROJECT AGREEMENT. SET FORTH BELOW ARE CERTAIN ELIGIBILITY REQUIREMENTS AND FURTHER PROCEDURAL REQUIREMENTS CONCERNING PROCUREMENT IN THE UNITED STATES OF GOODS AND SERVICES REQUIRED FOR THE PROJECT.

2. ELIGIBLE GOODS AND SERVICES. EXCEPT AS THE ADMINISTRATOR, AFTER CONSULTATIONS WITH THE GOVERNMENT OF THE UNITED STATES, SHALL OTHERWISE AGREE, A CONTRACT FOR THE SUPPLY FROM THE UNITED STATES OF GOODS AND SERVICES REQUIRED FOR THE PROJECT WILL BE ELIGIBLE FOR FINANCING OUT OF THE PROCEEDS OF THE FUND ONLY IF IT IS MADE (A) WITH AN ELIGIBLE CONTRACTOR OR SUPPLIER AND (B) FOR THE SUPPLY OF ELIGIBLE GOODS OR SERVICES.

3. AN ELIGIBLE CONTRACTOR OR SUPPLIER IS ONE WHO IS LOCATED IN THE UNITED STATES PROVIDED THAT (A) SUCH CONTRACTOR OR SUPPLIER HAS NOT BEEN DECLARED INELIGIBLE BY THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (AID) AND (B) THAT SUCH CONTRACTOR OR SUPPLIER IS NOT IN BREACH OF ITS EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS UNDER EXECUTIVE ORDER NO. 11246, AS AMENDED, AND REGULATIONS AND ORDERS ISSUED THEREUNDER.

4. ELIGIBLE GOODS AND SERVICES ARE GOODS AND SERVICES THAT HAVE BEEN PROCURED ON THE BASIS OF COMPETITION INTERNATIONALLY OR WITHIN THE UNITED STATES IN ACCORDANCE WITH ARRANGEMENTS APPROVED BY THE ADMINISTRATOR IN ACCORDANCE WITH PARAGRAPH 1 OF SCHEDULE 3 OF THE PROJECT AGREEMENT.

5. ELIGIBLE GOODS ARE, IN ADDITION, GOODS (A) THAT COMPLY WITH THE SOURCE, ORIGIN AND COMPONENTRY RULES OF AID; (B) WHICH HAVE BEEN SHIPPED ON THE TRANSPORTATION MEDIA OF ANY COUNTRY INCLUDED IN CODE 935 OF THE AID GEOGRAPHIC CODE BOOK; AND (C) OF WHOSE GROSS TONNAGE THAT IS TRANSPORTED ON OCEAN VESSELS, AT LEAST 50 PERCENT IS TRANSPORTED ON PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS, UNLESS SUCH VESSELS ARE NOT AVAILABLE LIMITED OFFICIAL USE

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AT FAIR AND REASONABLE RATES.

6. CIVIL WORKS CONTRACTS. ALL UNITED STATES CONTRACTORS AWARDED CIVIL WORKS CONTRACTS UNDER THE PROJECT SHALL COMPLY WITH THE FOLLOWING FURTHER REQUIREMENTS:

(A) THE CONTRACTOR SHALL TAKE OUT WORKERS' COMPENSATION INSURANCE OR OTHER SECURITY TO ASSURE PAYMENT OF COMPENSATION BENEFITS IN THE EVENT OF

INJURY OR DEATH OF EMPLOYEES IN THE COURSE OF THEIR EMPLOYMENT UNDER THE CONTRACT. SUCH INSURANCE, WITH RESPECT TO EMPLOYEES WHO ARE UNITED STATES CITIZENS OR BONA FIDE RESIDENTS OF THE UNITED STATES OR WHO ARE HIRED IN THE UNITED STATES, SHALL ASSURE PAYMENT OF BENEFITS COMPARABLE TO THOSE PROVIDED UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' ACT (33 U.S.C. 901 ET SEQ); AND WITH RESPECT TO OTHER EMPLOYEES, SHALL ASSURE PAYMENT OF BENEFITS MEETING AT LEAST MINIMUM LEGAL REQUIREMENTS APPLICABLE BY VIRTUE OF PLACE OF ORIGIN AND SITE OF THE WORK.

(B) THE CONTRACTOR SHALL MAINTAIN BOOKS AND RECORDS CONCERNING TRANSACTIONS UNDER OR IN CONNECTION WITH THE CONTRACT. SUCH BOOKS AND RECORDS SHALL BE AVAILABLE FOR AUDIT BY EDL, BY THE ADMINISTRATOR DURING THE TERM AND THE FUND AGREEMENT AND BY AID FOR A PERIOD OF THREE YEARS AFTER COMPLETION OF WORK UNDER THE CONTRACT.

(C) THE NUMBER OF NON-UNITED STATES NATIONALS EMPLOYED BY THE CONTRACTOR TO PERFORM CONSTRUCTION SERVICES AT THE CONSTRUCTION SITE SHALL NOT EXCEED 20 PERCENT OF ALL PERSONS (OTHER THAN CITIZENS OR PERMANENT RESIDENTS OF LAOS) WHO PERFORM SUCH SERVICES. THIS REQUIREMENT SHALL NOT APPLY TO "UNLIMITED BIDS" OR TO ANY CONTRACT FOR WHICH A DETERMINATION IS MADE PRIOR TO THE OPENING OF BIDS THAT THIS REQUIREMENT WOULD RESULT IN "EXCESSIVE COSTS".

(D) THE CONTRACTOR SHALL REFRAIN FROM DISCRIMINATION IN THE RECRUITMENT OR EMPLOYMENT OF PERSONNEL IN THE UNITED STATES FOR THE PERFORMANCE OF THE CONTRACT BECAUSE OF RACE, COLOR, ORIGIN, SEX OR NATIONAL ORIGIN. A SUB-CONTRACTOR SHALL SIMILARLY SATISFY THE ABOVE REQUIREMENTS AS IF A PRIME CONTRACTOR.

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7. APPROPRIATE PROVISIONS RELATING TO THE ABOVE REQUIREMENTS SHALL BE INCLUDED IN ALL RELEVANT TENDER DOCUMENTS FOR THE SUPPLY OF GOODS AND SERVICES FOR THE PROJECT AND IN RELATED CONTRACTS."

BB DESIRABLE THAT PROVISIONS IN PARAGRAPHS 5(B) AND 6(C) BE EXPANDED TO REDUCE TO MINIMUM NEED TO REFER TO OTHER DOCUMENTS, TO CONSULT USAID AND TO OBTAIN ADMINISTRATOR'S APPROVAL. AT THE SAME TIME ESSENTIAL THAT SIMPLICITY BE RETAINED, EVEN AT EXPENSE OF ELIMINATING PROVISIONS FOR WAIVER OF REQUIREMENTS OR EXCEPTIONS. ANY SUGGESTIONS ON THESE PROVISIONS PARTICULARLY WELCOME.

CC ISSUES OF INTEREST ON US CONTRIBUTION, DRAWDOWN PROCEDURES AND PROVISION OF INFORMATION BY ADMINISTRATOR

TO USAID SHOULD BE DEALT WITH SEPARATELY.
DD ANXIOUS TO RECEIVE REVISED DRAFT USAID LOAN
AGREEMENT EARLIEST. END QUOTE
SULLIVAN

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NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, TECHNICAL ASSISTANCE, CONSTRUCTION, BANK LOANS, DAMS, PROGRAMS (PROJECTS), CONTRACTS, WORKMENS COMPENSATION INSURANCE, LOAN AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 MAR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974MANILA03489
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740064-0605
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740318/aaaaaqa.tel
Line Count: 173
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION AID
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 06 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06-Aug-2002 by shawdg>; APPROVED <06-Aug-2002 by MorefiRH>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: EFIN, LA, US, ADB-1, ELECTRICITE DU LOAS, EDL
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005